

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
(WESTERN DIVISION)

CHRISTOPHER V. DOWNEY,	:	
	:	
Plaintiff,	:	Civil Action No. 1:09-cv-634
	:	(Judge Barrett)
vs.	:	(Mag. Judge Black)
	:	
BLAISE A. DOWNEY,	:	
	:	
Defendant.	:	

DEFENDANT BLAISE DOWNEY'S ANSWER TO THE COMPLAINT

Defendant, Blaise A. Downey ("Defendant"), for his Answer to the Complaint¹ of Plaintiff Christopher V. Downey ("Plaintiff") states as follows:

FIRST DEFENSE

1. Plaintiff has failed to state claims upon which relief can be granted, pursuant to Rule 12(B)(6) of the Federal Rules of Civil Procedure.

SECOND DEFENSE

2. Defendant admits the allegations set forth in paragraph 1 of the Complaint.

3. Defendant admits the allegations set forth in paragraph 2 of the Complaint.

4. Defendant admits the allegations set forth in paragraph 3 of the Complaint.

5. Defendant is without sufficient information as to the allegations set forth in paragraph 4, and, therefore, denies the same.

¹ Defendant has filed this Answer related to certain Counts of the Complaint. A Motion to Dismiss has been simultaneously filed related to the claims contained in Counts 3, 6, 9, 11-16 and 21-38 of the Complaint.

6. Defendant admits to the filing of certain copyright forms as alleged in paragraph 5 of the Complaint. Defendant denies the alleged legal effect of such filings and Defendant denies the statement that “all songs in this work are defined by Defendant as being unpublished.”

7. Defendant admits to the filing of certain copyright forms as alleged in paragraph 6 of the Complaint. Defendant denies the alleged legal effect of such filings as well as all remaining allegations set forth in paragraph 6 of the Complaint.

8. In response to paragraph 7 of the Complaint, Defendant states that certain copyright forms were filed, however, Defendant denies the legal effect thereof or the rights alleged in furtherance thereof. Defendant denies the remaining claims set forth in paragraph 7 of the Complaint.

Defendant denies the allegations set forth in paragraph 8 of the Complaint.

JURISDICTION AND VENUE

9. Defendant denies the allegations set forth in paragraph 9 of the Complaint.

COMPLAINT I - COPYRIGHT INFRINGEMENT

10. In response to paragraph 10 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-10 of his Answer.

11. In response to paragraph 11 of the Complaint, Defendant admits “White Castles in Africa” is included in copyright number SRU-663-486. Defendant denies the remaining allegations set forth in paragraph 11 of the Complaint.

12. Defendant denies the allegations set forth in paragraph 12 of the Complaint.

13. Defendant denies the allegations set forth in paragraph 13 of the Complaint.

14. To the extent any allegations are made as to Defendant in paragraph 14 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 14 of the Complaint by Plaintiff should be denied.

15. To the extent any allegations are made as to Defendant in paragraph 15 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 15 of the Complaint by Plaintiff should be denied.

16. To the extent any allegations are made as to Defendant in paragraph 16 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 16 of the Complaint by Plaintiff should be denied.

COMPLAINT II - COPYRIGHT INFRINGEMENT

17. In response to paragraph 17 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-17 of his Answer.

18. Defendant admits the allegations set forth in paragraph 18 of the Complaint.

19. Defendant denies the allegations set forth in paragraph 19 of the Complaint.

20. Defendant denies the allegations set forth in paragraph 20 of the Complaint.

21. To the extent any allegations are made as to Defendant in paragraph 21 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 21 of the Complaint by Plaintiff should be denied.

22. To the extent any allegations are made as to Defendant in paragraph 22 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 22 of the Complaint by Plaintiff should be denied.

COUNT III - COPYRIGHT INFRINGEMENT

23. In response to paragraph 23 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-23 of his Answer.

24. The claims alleged in paragraphs 24 to 36 of the Complaint that comprise Count III are the subject of a Motion to Dismiss filed by Defendant.

COMPLAINT IV - COPYRIGHT INFRINGEMENT

25. In response to paragraph 37 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-25 of his Answer.

26. Defendant admits the allegations set forth in paragraph 38 of the Complaint.

27. In response to paragraph 39 of the Complaint, Defendant admits “Serpent on Green Hornet Show and Not Much To Occupy Me” is included in copyright number SRU-593-919. Defendant denies the remaining allegations set forth in paragraph 39 of the Complaint.

28. In response to paragraph 40 of the Complaint, Defendant admits “Lost Episode of the Green Hornet” is included in copyright number SRU-287-757. Defendant denies the remaining allegations set forth in paragraph 40 of the Complaint.

29. Defendant denies the allegations set forth in paragraph 41 of the Complaint.

30. Defendant denies the allegations set forth in paragraph 42 of the Complaint.

31. Defendant denies the allegations set forth in paragraph 43 of the Complaint.

32. To the extent any allegations are made as to Defendant in paragraph 44 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 44 of the Complaint by Plaintiff should be denied.

33. To the extent any allegations are made as to Defendant in paragraph 45 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 36 of the Complaint by Plaintiff should be denied.

34. To the extent any allegations are made as to Defendant in paragraph 46 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 46 of the Complaint by Plaintiff should be denied.

COMPLAINT V - COPYRIGHT INFRINGEMENT

35. In response to paragraph 47 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-35 of his Answer.

36. In response to paragraph 48 of the Complaint, Defendant admits that “Goldfinger” is included in copyright number SRU-663-486.

37. Defendant denies the allegations set forth in paragraph 49 of the Complaint.

38. Defendant is without information sufficient as to the allegations set forth in paragraph 50 of the Complaint, and, therefore, denies the same.

39. Defendant denies the allegations set forth in paragraph 51 of the Complaint.

40. Defendant denies the allegations set forth in paragraph 52 of the Complaint.

41. Defendant admits the allegations set forth in paragraph 53 of the Complaint.

42. Defendant denies the allegations set forth in paragraph 54 of the Complaint.

43. Defendant is without information sufficient as to the allegations set forth in paragraph 55 of the Complaint, and, therefore, denies the same.

44. Defendant denies the allegations set forth in paragraph 56 of the Complaint.

45. To the extent any allegations are made as to Defendant in paragraph 57 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 57 of the Complaint by Plaintiff should be denied.

46. To the extent any allegations are made as to Defendant in paragraph 58 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 58 of the Complaint by Plaintiff should be denied.

47. To the extent any allegations are made as to Defendant in paragraph 59 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 59 of the Complaint by Plaintiff should be denied.

48. To the extent any allegations are made as to Defendant in paragraph 60 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 60 of the Complaint by Plaintiff should be denied.

COUNT VI

49. In response to paragraph 61 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-49 of his Answer.

50. The claims alleged in paragraphs 62 to 68 of the Complaint that comprise Count VI are the subject of a Motion to Dismiss filed by Defendant.

COUNT VII - COPYRIGHT INFRINGEMENT

51. In response to paragraph 69 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-51 of his Answer.

52. Defendant admits the allegations set forth in paragraph 70 of the Complaint.

53. Defendant denies the allegations set forth in paragraph 71 of the Complaint.

54. Defendant is without information sufficient as to the allegations set forth in paragraph 72 of the Complaint, and, therefore, denies the same.

55. Defendant denies the allegations set forth in paragraph 73 of the Complaint.

56. Defendant denies the allegations set forth in paragraph 74 of the Complaint.

57. To the extent any allegations are made as to Defendant in paragraph 75 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 75 of the Complaint by Plaintiff should be denied.

58. To the extent any allegations are made as to Defendant in paragraph 76 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 76 of the Complaint by Plaintiff should be denied.

COUNT VIII - COPYRIGHT INFRINGEMENT

59. In response to paragraph 77 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-59 of his Answer.

60. Defendant admits that “Sunshines on the Psycho Killer over Heaven of Your Face (Version 1)” is included in copyright SRU-593-919. Defendant denies the remaining allegations set forth in paragraph 78 of the Complaint.

61. Defendant admits the allegations set forth in paragraph 79 of the Complaint.

62. Defendant denies the allegations set forth in paragraph 80 of the Complaint.

63. Defendant denies the allegations set forth in paragraph 81 of the Complaint.

64. Defendant denies the allegations set forth in paragraph 82 of the Complaint.

65. To the extent any allegations are made as to Defendant in paragraph 83 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 83 of the Complaint by Plaintiff should be denied.

66. To the extent any allegations are made as to Defendant in paragraph 84 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 84 of the Complaint by Plaintiff should be denied.

67. To the extent any allegations are made as to Defendant in paragraph 85 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 85 of the Complaint by Plaintiff should be denied.

COUNT IX - COPYRIGHT INFRINGEMENT

68. In response to paragraph 86 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-68 of his Answer.

69. The claims alleged in paragraphs 87 to 95 of the Complaint that comprise Count IX are the subject of a Motion to Dismiss filed by Defendant.

COUNT X - COPYRIGHT INFRINGEMENT

70. In response to paragraph 96 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-70 of his Answer.

71. In response to paragraph 97 of the Complaint, Defendant has no information as to any copyright filing by Plaintiff related to the song known as “Secret Agent Andy,” and, therefore, denies the allegations set forth in paragraph 97, and its subpart, of the Complaint.

72. In response to paragraph 98 of the Complaint, Defendant admits the song “Me and My Monk” is included in the copyright number SRU-593-919. Defendant denies the remaining allegations set forth in paragraph 98, and its subparts, of the Complaint.

73. In response to paragraph 99 of the Complaint, Defendant admits the song “Path of Bones (Twice)” is included in the copyright number SRU-593-919. Defendant denies the remaining allegations set forth in paragraph 99, and its subparts, of the Complaint.

74. To the extent any allegations are made as to Defendant in paragraph 100 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 100 of the Complaint by Plaintiff should be denied.

75. To the extent any allegations are made as to Defendant in paragraph 101 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 101 of the Complaint by Plaintiff should be denied.

76. To the extent any allegations are made as to Defendant in paragraph 102 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 102 of the Complaint by Plaintiff should be denied.

COUNT XI - COPYRIGHT INFRINGEMENT

77. In response to paragraph 103 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-77 of his Answer.

78. The claims alleged in paragraphs 104 to 109 of the Complaint that comprise Count XI are the subject of a Motion to Dismiss filed by Defendant.

COUNT XII - COPYRIGHT INFRINGEMENT

79. In response to paragraph 110 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-79 of his Answer.

80. The claims alleged in paragraphs 111 to 117 of the Complaint that comprise Count XII are the subject of a Motion to Dismiss filed by Defendant.

COUNT XIII - COPYRIGHT INFRINGEMENT

81. In response to paragraph 118 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-81 of his Answer.

82. The claims alleged in paragraphs 119 to 123 of the Complaint that comprise Count XIII are the subject of a Motion to Dismiss filed by Defendant.

COUNT XIV - COPYRIGHT INFRINGEMENT

83. In response to paragraph 124 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-83 of his Answer.

84. The claims alleged in paragraphs 125 to 129 of the Complaint that comprise Count XIV are the subject of a Motion to Dismiss filed by Defendant.

COUNT XV - COPYRIGHT INFRINGEMENT

85. In response to paragraph 130 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-85 of his Answer.

86. The claims alleged in paragraphs 131 to 136 of the Complaint that comprise Count XV are the subject of a Motion to Dismiss filed by Defendant.

COUNT XVI - COPYRIGHT INFRINGEMENT

87. In response to paragraph 137 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-87 of his Answer.

88. The claims alleged in paragraphs 138 to 142 of the Complaint that comprise Count XVI are the subject of a Motion to Dismiss filed by Defendant.

COUNT XVII - COPYRIGHT INFRINGEMENT

89. In response to paragraph 143 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-89 of his Answer.

90. In response to paragraph 144 of the Complaint, Defendant admits the song “South Park” is included in the copyright number SRU-663-486.

91. Defendant denies the allegations set forth in paragraph 145 of the Complaint.

92. Defendant denies the allegations set forth in paragraph 146 of the Complaint.

93. Defendant denies the allegations set forth in paragraph 147 of the Complaint.

94. Defendant is without information sufficient as to the allegations set forth in paragraph 148 of the Complaint, and, therefore, denies the same.

95. To the extent any allegations are made as to Defendant in paragraph 149 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 149 of the Complaint by Plaintiff should be denied.

96. To the extent any allegations are made as to Defendant in paragraph 150 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 150 of the Complaint by Plaintiff should be denied.

COUNT XVIII - COPYRIGHT INFRINGEMENT

97. In response to paragraph 151 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-97 of his Answer.

98. In response to paragraph 152 of the Complaint, Defendant is without sufficient information as to any copyright filing by Plaintiff regarding a song known as “Do the Bug,” and, therefore, denies the allegations set forth in paragraph 152 of the Complaint.

99. Defendant is without sufficient information as to the allegations set forth in paragraph 153 of the Complaint, and, therefore, denies the same.

100. In response to paragraph 154 of the Complaint, Defendant admits the song “I’m a Bug” is included in the copyright number SRU-593-919. Defendant denies the remaining allegations set forth in paragraph 154 of the Complaint, and its subparts.

101. In response to paragraph 155 of the Complaint, Defendant admits the song “I’m a Bug (Short Version)” is included in the copyright number SRU-593-919. Defendant denies the remaining allegations set forth in paragraph 155 of the Complaint, and its subparts.

102. In response to paragraph 156 of the Complaint, Defendant admits the song “Last Chance Bar and Grill” is included in the copyright number SRU-593-919. Defendant denies the remaining allegations set forth in paragraph 156 of the Complaint, and its subparts.

103. To the extent any allegations are made as to Defendant in paragraph 157 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 157 of the Complaint by Plaintiff should be denied.

104. To the extent any allegations are made as to Defendant in paragraph 158 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 158 of the Complaint by Plaintiff should be denied.

COUNT XIX - COPYRIGHT INFRINGEMENT

105. In response to paragraph 159 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-105 of his Answer.

106. In response to paragraph 160 of the Complaint, Defendant does not have sufficient information as to any copyright filing by Plaintiff regarding a song known as “Gunfights on Death Row” or the other allegations set forth in paragraph 160 of the Complaint, and, therefore, denies the same.

107. In response to paragraph 161 of the Complaint, Defendant admits the song “Gunfights on Death Row” is included in the copyright number SRU-593-919. Defendant denies the remaining allegations set forth in paragraph 161 of the Complaint.

108. To the extent any allegations are made as to Defendant in paragraph 162 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 162 of the Complaint by Plaintiff should be denied.

109. To the extent any allegations are made as to Defendant in paragraph 163 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 163 of the Complaint by Plaintiff should be denied.

COUNT XX - COPYRIGHT INFRINGEMENT

110. In response to paragraph 164 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-110 of his Answer. In further response to paragraph 164 of the Complaint, Defendant admits the song “Cannibal Women” is included in the copyright number SRU-593-919.

111. In response to paragraph 165 of the Complaint, Defendant admits the song “Cannibal Women” is included in the copyright number SRU-593-919.

112. Defendant denies the allegations set forth in paragraph 166 of the Complaint.

113. Defendant denies the allegations set forth in paragraph 167 of the Complaint.

114. Defendant denies the allegations set forth in paragraph 168 of the Complaint.

115. Defendant denies the allegations set forth in paragraph 169 of the Complaint.

116. Defendant denies the allegations set forth in paragraph 170 of the Complaint.

117. Defendant denies the allegations set forth in paragraph 171 of the Complaint.

118. To the extent any allegations are made as to Defendant in paragraph 172 of the Complaint, such allegations are denied. Defendant further states that the relief sought in paragraph 172 of the Complaint by Plaintiff should be denied.

COUNT XXI - COPYRIGHT INFRINGEMENT

119. In response to paragraph 173 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-119 of his Answer.

120. The claims alleged in paragraphs 174 to 178 of the Complaint that comprise Count XXI are the subject of a Motion to Dismiss filed by Defendant.

COUNT XXII - COPYRIGHT INFRINGEMENT

121. In response to paragraph 179 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-121 of his Answer.

122. The claims alleged in paragraphs 180 to 184 of the Complaint that comprise Count XXII are the subject of a Motion to Dismiss filed by Defendant.

COUNT XXIII - COPYRIGHT INFRINGEMENT

123. In response to paragraph 185 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-123 of his Answer.

124. The claims alleged in paragraphs 186 to 193 of the Complaint that comprise Count XXIII are the subject of a Motion to Dismiss filed by Defendant.

COUNT XXIV - COPYRIGHT INFRINGEMENT

125. In response to paragraph 194 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-125 of his Answer.

126. The claims alleged in paragraphs 195 to 204 of the Complaint that comprise Count XXIV are the subject of a Motion to Dismiss filed by Defendant.

COUNT XXV - COPYRIGHT INFRINGEMENT

127. In response to paragraph 205 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-127 of his Answer.

128. The claims alleged in paragraphs 206 to 210 of the Complaint that comprise Count XXV are the subject of a Motion to Dismiss filed by Defendant.

COUNT XXVI - COPYRIGHT INFRINGEMENT

129. In response to paragraph 211 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-129 of his Answer.

130. The claims alleged in paragraphs 212 to 214 of the Complaint that comprise Count XXVI are the subject of a Motion to Dismiss filed by Defendant.

COUNT XXVII - COPYRIGHT INFRINGEMENT

131. In response to paragraph 215 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-131 of his Answer.

132. The claims alleged in paragraphs 216 to 219 of the Complaint that comprise Count XXVII are the subject of a Motion to Dismiss filed by Defendant.

COUNT XXVIII - COPYRIGHT INFRINGEMENT

133. In response to paragraph 220 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-133 of his Answer.

134. The claims alleged in paragraphs 221 to 224 of the Complaint that comprise Count XXVIII are the subject of a Motion to Dismiss filed by Defendant.

COUNT XXIX - COPYRIGHT INFRINGEMENT

135. In response to paragraph 225 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-135 of his Answer.

136. The claims alleged in paragraphs 226 to 229 of the Complaint that comprise Count XXIX are the subject of a Motion to Dismiss filed by Defendant.

COUNT XXX - COPYRIGHT INFRINGEMENT

137. In response to paragraph 230 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-137 of his Answer.

138. The claims alleged in paragraphs 231 to 234 of the Complaint that comprise Count XXX are the subject of a Motion to Dismiss filed by Defendant.

COUNT XXXI - COPYRIGHT INFRINGEMENT

139. In response to paragraph 235 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-139 of his Answer.

140. The claims alleged in paragraphs 236 to 240 of the Complaint that comprise Count XXXI are the subject of a Motion to Dismiss filed by Defendant.

COUNT XXXII - COPYRIGHT INFRINGEMENT

141. In response to paragraph 241 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-141 of his Answer.

142. The claims alleged in paragraphs 242 to 245 of the Complaint that comprise Count XXXII are the subject of a Motion to Dismiss filed by Defendant.

COUNT XXXIII - COPYRIGHT INFRINGEMENT

143. In response to paragraph 246 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-143 of his Answer.

144. The claims alleged in paragraphs 247 to 250 of the Complaint that comprise Count XXXIII are the subject of a Motion to Dismiss filed by Defendant.

COUNT XXXIV - COPYRIGHT INFRINGEMENT

145. In response to paragraph 251 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-145 of his Answer.

146. The claims alleged in paragraphs 252 to 254 of the Complaint that comprise Count XXXIV are the subject of a Motion to Dismiss filed by Defendant.

COUNT XXXV - COPYRIGHT INFRINGEMENT

147. In response to paragraph 256 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-147 of his Answer.

148. The claims alleged in paragraphs 257 to 259 of the Complaint that comprise Count XXXV are the subject of a Motion to Dismiss filed by Defendant.

COUNT XXXVI - COPYRIGHT INFRINGEMENT

149. In response to paragraph 261 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-149 of his Answer.

150. The claims alleged in paragraphs 262 to 265 of the Complaint that comprise Count XXXIV are the subject of a Motion to Dismiss filed by Defendant.

COUNT XXXVI² - COPYRIGHT INFRINGEMENT

151. In response to paragraph 266 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-151 of his Answer.

152. The claims alleged in paragraphs 267 to 271 of the Complaint that comprise the second Count XXXVI are the subject of a Motion to Dismiss filed by Defendant.

COUNT XXXVII - COPYRIGHT INFRINGEMENT

153. In response to paragraph 272 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-153 of his Answer.

154. The claims alleged in paragraphs 273 to 280 of the Complaint that comprise Count XXXVII are the subject of a Motion to Dismiss filed by Defendant.

² The Complaint contains two Counts numbered XXXVI.

COUNT XXXVIII - COPYRIGHT INFRINGEMENT

155. In response to paragraph 281 of the Complaint, Defendant incorporates by reference his responses to paragraphs 1-155 of his Answer.

156. The claims alleged in paragraphs 282 to 286 of the Complaint that comprise Count XXXVIII are the subject of a Motion to Dismiss filed by Defendant.

157. Defendant denies all other allegations contained in the Complaint not already specifically denied herein.

THIRD DEFENSE

158. As Plaintiff and Defendant are co-claimants of the copyrights held on the material that is the subject of this litigation, Plaintiff lacks standing to allege the claims made against Defendant in the Complaint.

FOURTH DEFENSE

159. Plaintiff has failed to mitigate his damages.

FIFTH DEFENSE

160. Plaintiff's claims are barred by the doctrines of waiver and/or estoppel and/or laches.

SIXTH DEFENSE

161. Plaintiff has failed to join all necessary parties needed for just adjudication.

SEVENTH DEFENSE

162. For all the reasons stated in the Motion to Dismiss filed by Defendant, the claims alleged herein should be dismissed.

EIGHTH DEFENSE

163. Defendant abandoned any and all rights or interest in the copyrights that are the subject of this litigation prior to the filing of the Complaint in this matter by Plaintiff.

NINTH DEFENSE

164. The statute of limitations for the claims alleged by Plaintiff have expired as Plaintiff knew of the copyright filings as early as 2005.

TENTH DEFENSE

165. Plaintiff and Defendant are the co-authors of any and all copyrights that are the subject of this litigation and therefore Plaintiff lacks standing to bring these claims.

ELEVENTH DEFENSE

166. The claims alleged are state law claims and the federal courts lack jurisdiction to hear claims alleged regarding ownership and authorship of copyrights.

WHEREFORE, having fully answered the Complaint, Defendant Blaise A. Downey demands that the Complaint be dismissed with prejudice at Plaintiff's cost; that Defendant be awarded all costs and reasonable attorney's fees incurred in his defense of this action; and that Plaintiff take nothing hereby.

JURY DEMAND

Defendant demands a trial by jury upon all issues so triable by jury.

s/Joseph J. Braun
Joseph J. Braun (Ohio Bar No. 0069757)

Dated: January 11, 2010

Respectfully submitted,

STRAUSS & TROY

s/Joseph J. Braun
Joseph J. Braun (Ohio Bar No. 0069757)
(jjbraun@strausstroy.com)
The Federal Reserve Building
150 East Fourth Street
Cincinnati, OH 45202-4018
(513) 629-9403 – telephone
(513) 629-9426 – facsimile

Attorney for Defendant Blaise A. Downey

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been filed electronically with the U.S. District Court this 11th day of January 11, 2010. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I also certify that a true and accurate copy of the foregoing was served via ordinary United States mail, first class postage prepaid, upon Defendant Christopher V. Downey, 3216 Bishop Street, Cincinnati, OH 45220, this 11th day of January, 2010.

s/Joseph J. Braun
Joseph J. Braun (Ohio Bar No. 0069757)

2072215_1.DOC